

THE HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SCOTT AND KATHRYN KASEBURG, *et al*,

Plaintiffs,

v.

PORT OF SEATTLE, a municipal corporation; PUGET SOUND ENERGY, INC., a Washington for profit corporation and KING COUNTY, a home rule charter county, and CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, a municipal corporation,

Defendants.

NO. 14-cv-00784-JCC

DECLARATION OF RANDALL THOMSEN
IN SUPPORT OF CONSOLIDATED
MOTION OF DEFENDANTS KING
COUNTY AND PORT OF SEATTLE FOR A
CONTINUANCE UNDER CR 56(d)

NOTE ON MOTION CALENDAR:
SEPTEMBER 4, 2015

I, Randall Thomsen, declare as follows:

1. I am one of the attorneys for the defendant Port of Seattle (the "Port") in the above captioned action, am over age 18, and competent to be a witness. I am making this declaration in support of Defendants King County and Port of Seattle's Consolidated Motion for a Continuance Under CR 56(d).

2. On August 20, 2014, the Port served its First Set of Interrogatories and Requests for Production to the Plaintiffs. That discovery included interrogatories and requests for

1 production seeking information about the appraisals relating to the plaintiffs' property as well as
2 information related to the identity and opinions of plaintiffs' expert witnesses.

3 3. On September 22, 2014, plaintiffs responded to the Port of Seattle's discovery.
4 Each plaintiff provided responses but, with certain limited exceptions, the responses were
5 identical. Attached as Exhibit 1 to my declaration are true and correct copies of excerpts from
6 the Port's discovery and plaintiffs' responses. The excerpts are from the responses of plaintiffs
7 Scott and Kathy Kaseburg, although the responses are representative of all plaintiffs who
8 answered the discovery.

9 4. Since plaintiffs' original responses in September 2014 and, until plaintiffs filed
10 their motion for summary judgment on August 24, 2015, plaintiffs did not supplement their
11 discovery responses or provide any additional information regarding the identity or opinions of
12 any expert witnesses.

13 5. Were the underlying motion for summary judgment to be continued, the Port
14 would depose the two experts from whom plaintiffs have submitted declarations in support of
15 plaintiffs' motion for summary judgment. The Port also would review and evaluate the
16 appraisals prepared for the plaintiffs' property requested in discovery by both the Port and King
17 County and which are the subject of defendant King County's pending motion to compel,
18 assuming the Court grants that motion to compel.

19 6. The Port anticipates that, as a result of the depositions of plaintiffs' experts as
20 well as the information provided in the appraisals related to plaintiffs' property, it would be able
21 to offer additional facts to justify its opposition. In particular, the Port anticipates it could offer
22 facts showing that plaintiffs' experts' opinions contain omissions, are based on certain
23 speculative assumptions, and assume inaccurate facts. The Port would offer those facts to show
24 that material issues of fact are in dispute about whether the deeds at issue granted easements or
25 interests in fee to BNSF's predecessors-in-interest. The Port also anticipates that it could offer

1 facts that, based on the appraisals performed in the *Haggart v. United States* lawsuit, a
2 substantial number of plaintiffs already have been compensated for the equivalent of a fee
3 interest (meaning including subsurface or aerial rights). This fact would be contrary to the facts
4 alleged in plaintiffs' motion that the reversionary rights for which payment was ordered in
5 *Haggart* was only as to surface rights.

6 I swear under the penalty of perjury under the laws of the United States that the
7 foregoing is true and correct.

8 DATED this 27th day of August, 2015, in Seattle, Washington.

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11 RANDALL THOMSEN
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DECLARATION OF FILING AND SERVICE

I hereby certify that on August 27, 2015, I electronically filed the foregoing document(s) with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Daryl A. Deutsch
Rodgers, Deutsch & Turner, PLLC
Three Lake Bellevue Drive, Suite 100
Bellevue, WA 98005
daryl@rdtlaw.com
Attorneys for Plaintiffs

Timothy G. Leyh
Randall Thomsen
Kristin Ballinger
Calfo, Harrigan, Leyh & Eakes, LLP
999 Third Avenue, Suite 4400
Seattle, WA 98104
timl@calfoharrigan.com
randallt@calfoharrigan.com
Kristinb@calfoharrigan.com
Attorneys for Defendant Port of Seattle

Thomas S. Stewart
Elizabeth McCulley
Michael J. Smith
Stewart Wald & McCulley LLC
9200 Ward Parkway, Suite 5500
Kansas City, MO 64114
stewart@swm.legal
smith@swm.legal
mcculley@swm.legal
Attorneys for Plaintiffs

James E. Breitenbucher
Courtney L. Seim
Gavin William Skok
Bryan J. Case
Riddell Williams
1001 Fourth Avenue Plaza, Suite 4500
Seattle, WA 98154
jbreitenbucher@riddellwilliams.com
cseim@riddellwilliams.com
gskok@riddellwilliams.com
bcase@riddellwilliams.com
*Attorneys for Defendant
Puget Sound Energy Inc.*

Dale N. Johnson
Van Ness Feldman LLP
719 2nd Avenue, Suite 1150
Seattle, WA 98104-1519
dnj@vfn.com
*Attorney for Defendant
Cascade Water Alliance*

Loren G. Armstrong
Desmond L. Brown
Sound Transit
401 South Jackson
Seattle, WA 98104
loren.armstrong@soundtransit.org
desmond.brown@sountransit.org
*Attorneys for Defendant Central Puget
Sound Regional Transit Authority*

1 I declare under penalty of perjury under the laws of the United States and the State of
2 Washington that the foregoing is true and correct.

3 DATED: August 27, 2015, at Seattle, Washington.

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5 s/ _____
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EXHIBIT 1

KASEBURG-1

THE HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SCOTT AND KATHRYN KASEBURG, ET
AL,

Plaintiffs,

vs.

PORT OF SEATTLE, a municipal corporation;
PUGET SOUND ENERGY, INC., a
Washington for profit corporation
and KING COUNTY, a home rule charter
county,

Defendants.

NO. 2:14-CV-000784-JCC

PLAINTIFFS' RESPONSE TO
DEFENDANT PORT OF SEATTLE'S
FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO
PLAINTIFFS

Pursuant to Federal Rules of Civil Procedure Rule 33 and Rule 34, Plaintiffs respond to
Defendant Port of Seattle's First Set of Interrogatories and Requests for Production to Plaintiffs
as follows:

INTERROGATORIES

Plaintiffs' Response to Defendant Port of Seattle First Set of
Interrogatories and Requests for Production to Plaintiffs - 2:14-
cv-000784-JCC - Page 1

RODGERS DEUTSCH & TURNER, P.L.L.C.
Attorneys At Law
Three Lakes Bellevue Dr. Suite 100
Bellevue, Washington 98005-2440
Tel. (425)455-1110 Fax (425)455-1626

1 an easement interest in the right-of-way. *Id.* The same holds true for any other use
2 including power transmission lines.

3 INTERROGATORY NO. 13: Please identify all persons with any knowledge related
4 to any allegations in your Amended Complaint or to your Answers to Counterclaims not
5 identified in the previous Interrogatories.

6 ANSWER:

7 All Plaintiffs, all individuals identified in Defendants' initial disclosures, and other witnesses
8 and experts will be supplemented when appropriate.

9
10 INTERROGATORY NO. 14: Please identify all appraisals done for the subject
11 property or portions of the subject property and all documents referencing such appraisals.

12 ANSWER:

13 Plaintiffs are not in possession or aware of any appraisals for the subject property itself. If
14 Defendant is referring to appraisals of Plaintiffs' land outside the former railroad right-of-
15 way, Plaintiffs object. Appraisals conducted for settlement purposes in *Haggart v. U.S.* are
16 irrelevant and confidential and do not provide the basis for any allegation in Plaintiffs'
Complaint.

17 INTERROGATORY NO. 15: Please identify any and all damages you claim in this
18 action, including:
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- 20 a. All facts related to the type of damage and dollar amount of the damages;
21 b. All documents related to your allegation; and
22 c. All witnesses with knowledge related to your allegation.
23

24 Plaintiffs' Response to Defendant Port of Seattle First Set of
25 Interrogatories and Requests for Production to Plaintiffs - 2:14-
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RODGERS DEUTSCH & TURNER, P.L.L.C.
Attorneys At Law
Three Lakes Bellevue Dr. Suite 100
Bellevue, Washington 98005-2440
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ANSWER:

Defendants have clouded Plaintiffs' title and the threat of PSE using the railroad corridor, illegally granted by the Port, has damaged Plaintiffs and values and loss of marketability.

INTERROGATORY NO. 16: Please identify all expert witnesses you intend to call as witnesses on your behalf and for each expert identify all information required to be disclosed under Federal Rule of Civil Procedure 26.

ANSWER:

This request is premature as expert witnesses are not yet known at this time. Plaintiffs will supplement this response under the applicable rules.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Please produce all documents identified in the preceding Interrogatories.

RESPONSE:

Produced with Plaintiffs' Rule 26 Disclosures.

REQUEST FOR PRODUCTION NO. 2:

Please produce all documents referring, relating, or mentioning the subject property.

RESPONSE:

Plaintiffs' Response to Defendant Port of Seattle First Set of Interrogatories and Requests for Production to Plaintiffs - 2:14-cv-000784-JCC - Page 11

RODGERS DEUTSCH & TURNER, P.L.L.C.
Attorneys At Law
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Bellevue, Washington 98005-2440
Tel. (425)455-1110 Fax (425)455-1626

RESPONSE:

Objection, vague, indefinite and to the extent the subject property refers to the right-of-way, Plaintiffs object because it calls for a legal conclusion concerning the application of the centerline presumption. Plaintiffs have produced relevant documents in the Claims Book and Rule 26 disclosures and Plaintiffs are not required to do complete chains of title for their properties.

REQUEST FOR PRODUCTION NO. 6:

Please produce all appraisals related to the subject property.

RESPONSE:

Objection. Appraisals conducted for settlement purposes in *Haggart v. U.S.* are irrelevant and confidential and do not provide the basis for any allegation in Plaintiffs' Complaint.

REQUEST FOR PRODUCTION NO. 7:

Please produce all documents related to any permissive or adverse uses of the subject property.

RESPONSE:

Objection, unduly burdensome, irrelevant, vague and indefinite. Plaintiffs have produced relevant documents in the Claims Book and Rule 26 disclosures.

REQUEST FOR PRODUCTION NO. 8:

Please produce all documents related to the grant of any easement of any kind by you, or your predecessors in interest, in the subject property.

RESPONSE:

Plaintiffs have already produced the original grants to the railroad, which was an easement for railroad purposes.

REQUEST FOR PRODUCTION NO. 9:

Plaintiffs' Response to Defendant Port of Seattle First Set of Interrogatories and Requests for Production to Plaintiffs - 2:14-cv-000784-JCC - Page 13

RODGERS DEUTSCH & TURNER, P.L.L.C.
Attorneys At Law
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1 Please produce all documents referring, relating, or mentioning any of the damages you sustained
2 that are the subject of the Amended Complaint.

3 RESPONSE:

4 Objection as premature. Discovery is ongoing and Plaintiffs reserve the right to amend their
5 response to this request.

6
7 REQUEST FOR PRODUCTION NO. 10:

8 Please produce all documents that relate to your calculation of damages you claim in this action.

9 RESPONSE:

10 Objection as premature. Discovery is ongoing and Plaintiffs reserve the right to amend their
11 response to this request.

12 REQUEST FOR PRODUCTION NO. 11:

13 Please produce all documents sent to, received from, or prepared by any expert retained by you
14 and required to be produced pursuant to Federal Rule of Civil Procedure 26.

15
16 RESPONSE:

17 Objection as premature. Plaintiffs will provide documents prepared by expert witnesses at
18 the time provided under Rule 26 and a scheduling order that is expected to be ordered in
19 this case.

20 REQUEST FOR PRODUCTION NO. 12:

21 To the extent not produced in response to a prior Request for Production, please produce all
22 documents related to your Amended Complaint or Answers to Counterclaims.

23
24 Plaintiffs' Response to Defendant Port of Seattle First Set of
25 Interrogatories and Requests for Production to Plaintiffs - 2:14-
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Bellevue, Washington 98005-2440
Tel. (425)455-1110 Fax (425)455-1626

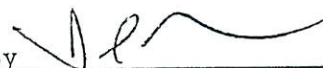
1 Please produce all documents evidencing any communications between you and any other
2 person referring, relating, or mentioning any of the issues involved in this lawsuit.

3 **RESPONSE:**

4 Objection as vague and overly broad and implicates attorney/client and/or work product
5 material.

6 Date: September 22, 2014.

RODGERS DEUTSCH & TURNER, P.L.L.C.

7
8 By 

9 Daryl A. Deutsch, WSBA No. 11003
10 Rodgers Deutsch & Turner, P.L.L.C.
11 3 Lake Bellevue Dr. Suite 100
12 Bellevue, WA 98005
13 Telephone (425) 455-1110
14 Facsimile (425) 455-1626
15 daryl@rdtlaw.com

16 and

17 BAKER STERCHI COWDEN & RICE, L.L.C.
18 Thomas S. Stewart
19 Elizabeth McCulley
20 Laura J. Bettenhausen
21 2400 Pershing Road, Suite 500
22 Kansas City, MO 64108
23 Telephone: (816) 471-2121
24 Facsimile: (816) 472-0288
25 stewart@bscr-law.com
mcculley@bscr-law.com
bettenhausen@bscr-law.com

ATTORNEYS FOR PLAINTIFFS

26 Plaintiffs' Response to Defendant Port of Seattle First Set of
27 Interrogatories and Requests for Production to Plaintiffs - 2:14-
28 cv-000784-JCC - Page 17

RODGERS DEUTSCH & TURNER, P.L.L.C.
Attorneys At Law
Three Lakes Bellevue Dr. Suite 100
Bellevue, Washington 98005-2440
Tel. (425)455-1110 Fax (425)455-1626

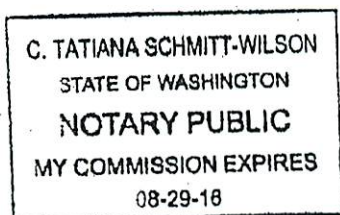
VERIFICATION

STATE OF WASHINGTON)
) ss.
 COUNTY OF King)

The undersigned named plaintiff, being first duly sworn on oath, appeared before me and indicated that they have read the within and foregoing answers to interrogatories and request for production, knows the contents thereof and believes the same to be true.

Scott Leunig Katharina Kaseburg

SUBSCRIBED AND SWORN TO before me this 3rd day of September 2014.



Katharina Kaseburg
 Notary Public in and for the State of WA
Washington residing at Maple
Valley, WA
 My commission expires: 8-29-2016

4830-3990-0957, v. 1.

Plaintiffs' Response to Defendant Port of Seattle First Set of Interrogatories and Requests for Production to Plaintiffs - 2:14-cv-000784-JCC - Page 20

RODGERS DEUTSCH & TURNER, P.L.L.C.
 Attorneys At Law
 Three Lakes Bellevue Dr. Suite 100.
 Bellevue, Washington 98005-2440
 Tel. (425)455-1110 Fax (425)455-1626